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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 518

MEYER ACKERMAN, ET AL., *Petitioners*,

v.

GLOBE-DEMOCRAT PUBLISHING COMPANY, *Respondent*.

On Petition for a Writ of Certiorari to the Supreme Court of Missouri

REPLY BRIEF FOR PETITIONERS

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On November 12, 1963, Mr. Justice Douglas dissenting, this Court denied certiorari in No. 414, *Monterosso* v. *St. Louis Globe-Democrat Publishing Co.*, and in No. 415, *Irwin* v. *Globe-Democrat Publishing Co.* The instant case, *Monterosso*, and *Irwin* arose out of the same factual situation. But there are circumstances differentiating the legal posture of the three cases of sufficient stature that, while *Monterosso* and *Irwin* may

be deemed to lack certiorari caliber, the instant case merits this Court's consideration. Thus:

1. *Monterosso* was tried to the court without a jury. Necessarily absent from it therefore is the question of the role of a jury verdict in the enforcement of an LMRA § 301 agreement.

2. *Irwin* was tried to a jury and in that respect is identical with the instant case. But the contract claim in *Irwin* was grounded on that part of the severance pay clause which provided for dismissal pay in the event an employee was "laid off to reduce the force," and not, as here, on that part of the clause which provided for dismissal pay in the event of lost employment resulting from "merger, consolidation or permanent suspension of publication. . . ." In view of the explicit differentiation in the clause between layoff "to reduce the force" and lost employment caused by "merger, consolidation or permanent suspension of publication," there was no room for a jury verdict based on reduction in force in a situation where the combination of composing rooms necessarily brought the event within the rubric of merger, consolidation, or permanent suspension.

3. This case presents therefore the ideal union of a cause tried to a jury based on a contract claim in which the jury function has fair scope for operation. Furthermore, in neither *Monterosso* or *Irwin* had it been shown, as it has been here, that the particular provision at issue in this case has widespread incidence throughout the United States, so that its adjudication is not parochial, and surely not so in the light of the intrinsic legal significance of the principles it implicates apart from its incidence.

Other objections to certiorari have, we believe, been sufficiently anticipated, except for the claim that the unstayed mandate, now said to be beyond recall, moots the question (Opp. pp. 4-6). As to this, it suffices to say that the "issuance of the lower court's mandate . . . does not destroy the power of the Supreme Court to review the lower court's judgment."[1]

Respectfully submitted,

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[1] Stern and Gressman, Supreme Court Practice, 416 (3d ed. 1962), and cases cited.